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2 CHAPTER 13 STANDING TRUSTEE
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8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 In re:

Chapter 13

11 TOM MARKOU

12 CASE NO. 10-44354 LT 13

13 Debtor,

14 **TRUSTEE'S OBJECTION TO**
15 **CONFIRMATION BASED ON LIEN**
16 **STRIP WHERE LIEN IS NOT**
17 **WHOLLY UNSECURED**

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21 COMES NOW, MARTHA G. BRONITSKY, Chapter 13 Standing
22 Trustee, (Trustee), objects to confirmation of this
23 chapter 13 case on the basis that Debtor is attempting to
24 strip a lien that is not wholly unsecured in violation of
25 controlling Ninth Circuit precedent.
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1 The Trustee also requests that the Court take
2 judicial notice of its own records in the case herein in
3 support of the facts set forth below. Fed.R.Evid. 201.

4 **FACTS**

5 Tom Markou ("Debtor") filed this chapter 13
6 bankruptcy case on April 16, 2010. Debtor is represented
7 by Robert A Wieckowski.

8 Debtor filed a chapter 13 plan concurrently with
9 this petition (Docket #2) and filed an amended plan on
10 June 22, 2010 (Docket #20). The amended plan proposes to
11 pay \$1,795 for 60 months with an estimated 3% dividend to
12 unsecured creditors.

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14 The optional provision of Debtor's amended plan
15 states the following:

16 Judicial lien of Georgia Markou to be paid
17 secured value of \$18,718.00 on value of
18 residence located at 40765 Vaca Drive, Fremont,
19 CA 94539. Debtor to file motion to avoid lien
20 after secured claim paid by Trustee.

21 Debtor's schedules value the judicial lien of
22 Georgia Markou at \$125,000 and value the Vaca
23 residence at \$673,000. Since the senior liens total
24 \$654,282, this leaves \$18,718 of equity attaching to
25 the Markou lien.

26 **APPLICABLE LAW & ANALYSIS**

27 In *Lam v. Investors Thrift (In re Lam)*, 211
28 B.R. 36 (9th BAP 1997), the BAP held that debtors

1 may strip wholly unsecured junior liens. In
2 distinguishing *Nobelman v. American Savings Bank*,
3 508 U.S. 324 (disallowing the cram-down on a first
4 mortgage that is the debtor's principal residence),
5 the Panel noted -

6 [T]he removal of a partially unsecured claim is
7 decidedly different from requiring a chapter 13
8 debtor to continue to pay the mortgage contract
9 when the mortgage lien attaches to nothing and
the lien ceases to be a secured claim.

10 *Lam* at 40.

11 In overruling a District Court decision, the Ninth
12 Circuit Court of Appeals adopted *Lam* five years later in
13 *Zimmer v. PSB Lending Corporation (In re Zimmer)*, 313
14 F.3d 1220 (9th Cir. 2002). ("We conclude that the
15 district court erred in holding that a wholly unsecured
16 lien is protected by the antimodification clause of
17 §1322(b)(2)." at 1227)

18 Debtor here is attempting to pay the secured amount
19 of the Markou lien through the plan, and then strip the
20 remaining portion through a motion to avoid in violation
21 of *Lam* and *Zimmer*. Both cases make clear that only
22 wholly unsecured liens may be stripped. If the Debtor's
23 lien attaches to one cent of equity, it must be allowed
24 as a full claim in its entirety.
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RESPECTFULLY SUBMITTED

/s/Leo G. Spanos 5909
Leo G. Spanos, Esq.
for Martha G. Bronitsky, Esq.
Chapter 13 Standing Trustee